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David A. Blumenthal Foley & Lardner 2029 Century Park East - Suite 3500 Los Angeles, CA 90067-3021			EXAMINER SALCE, JASON P	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/992,414

Applicant(s)

DUDKIEWICZ ET AL.

Examiner

Jason P. Salce

Art Unit

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14, 16-18, 20-23, 25-27, 29 and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16-18, 20-23, 25-27, 29 and 36-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/15/2008 have been fully considered but they are not persuasive.

Applicant has amended the independent claims to recite, "wherein each of the respective sets of second level sub-categories is distinct from one another". The examiner notes that this limitation still reads on the Ellis '709 Patent of record.

The examiner notes that while Applicant claims that each of the respective sets of the second level sub-categories is distinct from one another, the amendment is broad and does not state how each set of second level sub-categories are distinct from one another.

In view of Ellis, Figure 13a, discloses a top level category labeled "SERIES" (and further note that a set of top level categories exist in Figures 13a ("SERIES") and Figures 13b and 13c ("GENRE" and "CHANNEL")), and a first set of first level subcategories labeled "FRASIER" and "FRIENDS" in Figure 13a and a second set of first level subcategories labeled "MOVIES" and "GAME SHOWS" in Figure 13b (further note that the second set of first level subcategories "MOVIES" and the top level categories "SERIES" are clearly distinct from the programming events, because the category "SERIES" and the first level subcategory "MOVIES" are simply a label unrelated to an actual programming event (the television program displayed at a specified time)).

Ellis also discloses sets of second level sub-categories each corresponding to and encompassed by a first level subcategory (see **Figure 13a for a first set of second level sub-categories labeled "WEAK DISLIKE" and "STRONG LIKE" corresponding to and encompassed by the "SERIES" first level subcategory and Figure 13e and 13f for a second set of sub-categories labeled "ILLEGAL" and "MANDATORY" corresponding to and encompassed by the "RATING" and "OTHER" first level subcategories**).

In regards to the amended claim limitations, Ellis further discloses that the respective sets of second level sub-categories are distinct from one another using two different interpretations.

The first interpretation corresponds to how the second level subcategories "STRONG LIKE" and "WEAK LIKE" in Figure 13a correspond to the first level subcategory "SERIES", while the second level subcategories "STRONG LIKE" and "WEAK LIKE" in Figure 13b correspond to the first level subcategory "GENRE", therefore the second level subcategories in Figure 13a are distinct from the second level subcategories in Figure 13b because they correspond to different first level subcategories.

The second interpretation corresponds to how the second level subcategories "STRONG LIKE" and "WEAK LIKE" in Figure 13a corresponds to the first level subcategory "SERIES", while the second level subcategories "ILLEGAL" and "MANDATORY" in Figures 13e-13f, respectively, correspond to the first level subcategories "RATING" and "OTHER", respectively, therefore the second level

subcategories in Figure 13a are distinct from the second level subcategories in Figures 13e-13f because they correspond to different types of second level subcategories.

Therefore Ellis teaches that each of the respective sets of second level subcategories is distinct from one another.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12-14, 16-17, 21-23, 25-26, 36-38 and 40-41 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Ellis et al. (U.S. Patent No. 7,065,709).

Referring to claim 12, Ellis discloses a method for creating a viewer profile used for determining programming events of interest to a viewer (**see Figure 13A and Column 14, Lines 35-37**).

Ellis also discloses receiving user navigation commands for navigation among predefined subject matter categories (**see Column 15, Lines 5-9 and Figures 13a-13f**).

Ellis also discloses that the subject matter represented by each of said predefined categories is defined such that the predefined categories together form a

hierarchy comprising at least a set of top level categories, respective sets of first level sub-categories each corresponding to and encompassed by a top level category, and respective sets of second level sub-categories each corresponding to and encompassed by a first level sub-category (see again **Figure 13a for sets of top level categories (see Figures 13a-13b for the top level categories “Series” and “Genre”)**), sets of first level sub-categories corresponding to and encompassed by a top level category (see **Figure 13a for the first level sub-categories “Frasier” and “Friends”**) and sets of second level sub-categories corresponding to and encompassed by a first level sub-categories (see **Figure 13a for the second level sub-categories “Strong Like” or “Weak Like”**)).

Ellis further discloses that said navigation is performed in accordance with said hierarchy (see **Figure 13a and Column 15, Lines 5-20**), wherein the categories and the sub-categories are distinct from the programming events (**Figure 13A of Ellis teaches categories and sub-categories that are values added to a user's profile and are not the programming events that are displayed to the user on a television screen**), and wherein each of the respective sets of second level sub-categories is distinct from one another (see **Figures 13a and 13e-13f for the second level subcategories “STRONG LIKE” and “WEAK LIKE” in Figure 13a correspond to the first level subcategory “SERIES”, while the second level subcategories “STRONG LIKE” and “WEAK LIKE” in Figure 13b correspond to the first level subcategory “GENRE”, therefore the second level subcategories in Figure 13a are distinct from the second level subcategories in Figure 13b because they**

correspond to different first level subcategories). *Further note the second interpretation corresponding to how the second level subcategories “STRONG LIKE” and “WEAK LIKE” in Figure 13a corresponds to the first level subcategory “SERIES”, while the second level subcategories “ILLEGAL” and “MANDATORY” in Figures 13e-13f, respectively, correspond to the first level subcategories “RATING” and “OTHER”, respectively, therefore the second level subcategories in Figure 13a are distinct from the second level subcategories in Figures 13e-13f because they correspond to different types of second level subcategories.*

Ellis further discloses receiving input from the user indicating that a predefined category of the hierarchy to which the user has navigated using said navigation commands is to be added to or deleted from a viewer profile that represents subject matter of interest to the viewer (see Column 15, Lines 32-34).

Ellis further discloses receiving qualified keyword input from the user (see Figure 14 for selecting a qualified keyword from a set of keywords) associating a keyword supplied by the user (“narrow”, “wide” or “moderate”) with a specific category of the category hierarchy to indicate that the keyword describes subject matter of interest to the viewer only when that subject matter is also described by the category associated with the qualified keyword (see Column 15, Line 60 through Column 16, Line 67 for selecting a scope/qualified keyword for each profile, where the qualified keyword selected by the user associates a keyword (narrow) with a specific category of the category hierarchy (the comedy genre) to indicate that the keyword describes subject matter of interest to the viewer (My Stepmother is an Alien) only when

that subject matter is also described by the category associated with the qualified keyword (*only when a user sets a profile to narrow*)).

Ellis further discloses storing data representing a plurality of categories indicated by the user as representing subject matter of interest to the viewer and qualified keywords specified by the user in the viewer profile in a computer readable medium (see Column 6, Lines 17-25).

Referring to claim 13, Ellis discloses receiving input from a user specifying a keyword representing subject matter of interest to the viewer (**again see Figure 14 for the user selecting the keyword “moderate”, which when assigned by the viewer to a specific profile, becomes a qualified keyword, and further represents the subject matter of interest to present to a user in the electronic program guide screen customized by the user’s preference profile**).

Referring to claim 14, see the rejection of claim 13 and further note that the keyword “moderate” represents a score indicating an amount of viewer interest in the subject matter represented by the keyword (“moderate”). **See Column 16, Lines 20-39 for the “moderate” representing the amount of viewer interest in certain portions of the viewer’s profile.**

Referring to claim 16, Ellis discloses that said input indicates that a predefined category represents subject matter of interest to the viewer comprises a category

preference score indicating an amount of viewer interest in subject matter represented by the category (**see Figure 13a for a predefined category “Strong Like” indicating an amount of viewer interest in subject matter represented by the category**).

Referring to claim 17, Ellis discloses receiving input from a user specifying a priority of said viewer profile relative to other viewer profiles when multiple viewer profiles are used for determining programming events of interest (**see Figure 14 for assigning different priorities/scope to different profiles**).

Referring to claims 21-23 and 25-26, see the rejection of claims 12-14 and 16-17, respectively.

Referring to claim 36, Ellis discloses that each category and sub-category comprises an identifier that identifies the type of subject matter of at least one event (**see Figure 13a and 13b for each category and sub-category containing identifiers (the name of the category and the sub-category) that identifies the type of subject matter of at least one event (the television programming)**).

Referring to claim 37, Ellis discloses that each category and sub-category comprises an identifier that identifies the type of subject matter of at least one event without being the at least one event (**Figure 13b of Ellis teaches categories and sub-categories that are also distinct from the programming events, wherein the**

categories and sub-categories contain identifiers (*name of the genre and genre rating*) that do not list the name of the programming event).

Referring to claim 38, Ellis discloses that each of the respective sets of second level sub-categories differ in at least one second level sub-category (**see again Figures 13a and 13e-13f for the second level subcategories differing by one second level subcategory being “WEAK LIKE” while an additional second level subcategory being “ILLEGAL”**).

Referring to claims 40-41, Ellis discloses that the hierarchy further comprises respective sets of final level sub-categories each corresponding to and encompassed by a previous level sub-category, wherein each of the respective sets of final level sub-categories are distinct from one another, wherein the respective sets of final level sub-categories are the second level sub-categories and wherein the previous sub-category is the first level subcategory (**see the rejection of claim 12 and note the second level of subcategories addressed by the examiner and note that any set of the sets of second level subcategories can read on the final level of sub-categories because of the equivalence recited between the second and final level sub-categories in the claims**).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (U.S. Patent No. 7,065,709) in view of Ellis et al. (U.S. Patent Application Publication 2005/0251827).

Referring to claim 20, Ellis (**'709 patent**) discloses all of the limitations in claim 1, but fails to teach receiving input from a user specifying times of day during which the viewer profile is to be used for identifying programming events of interest.

Ellis (**'827 Publication**) discloses receiving input from a user specifying times of day during which the viewer profile is to be used for identifying programming events of interest (**see Paragraph 0105**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the profile creation tool, as taught by Ellis (**'709 patent**), using the viewer profile time of day option, as taught by Ellis (**'827 Publication**), for the purpose of provide a user the ability to use multiple sets of parental control settings profiles (**see Paragraph 0105 of Ellis ('827 Publication)**) in order to prevent children from watching unauthorized video programs.

Referring to claim 29, see the rejection of claim 20.

Claims 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (U.S. Patent No. 7,065,709) in view of Ellis et al. (U.S. Patent Application Publication 2005/0251827) in further view of Knudson et al. (U.S. Patent Application Publication 2005/0204387).

Referring to claim 18, Ellis (**'709 patent**) discloses all of the limitations in claim 1, but fails to teach receiving input from a user specifying times of day during which the viewer profile is to be used for identifying programming events of interest.

Ellis (**'827 Publication**) discloses receiving input from a user specifying times of day during which the viewer profile is to be used for identifying programming events of interest (**see Paragraph 0105**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the profile creation tool, as taught by Ellis (**'709 patent**), using the viewer profile time of day option, as taught by Ellis (**'827 Publication**), for the purpose of provide a user the ability to use multiple sets of parental control settings profiles (**see Paragraph 0105 of Ellis ('827 Publication)**) in order to prevent children from watching unauthorized video programs.

Although both Ellis references teach defining a profile and assigning the profile to be used at a specified time period, however both Ellis references fail to teach the user specifying a maximum number of alerts to be generated.

Knudson discloses that the user can specify a maximum number of alerts to be generated (**see Paragraph 0205**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the profile creation tool and profile time definition tool, as taught by the Ellis references, to utilize the option to allow a user to specify the maximum number of alerts to be generated, as taught by Knudson, for the purpose preventing the receiver memory to become saturated/full with a large portion of reminders, thereby negatively impacting system performance.

Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (U.S. Patent No. 7,065,709).

Referring to claim 39, Ellis discloses all of the limitations in claim 12, but fails to teach that the hierarchy further comprises sets of third level subcategories each corresponding to and encompassed by a second level sub-category.

The Examiner takes Official Notice to the fact that multiple levels of a hierarchy of classified data can be stored and accessed past a second level.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the hierarchy selection levels, as taught by Ellis, using the additional classification/hierarchy levels, as taught by the Examiner's Official Notice, for the purpose of providing a further classification breakdown of the categories and subcategories in order for the user to provide a more detailed and refined profile for distinguishing preferred programs.

Referring to claim 42, Ellis discloses all of the limitations in claim 12, but fails to teach that one of the top-level categories comprises sports, wherein one of the first level sub-categories corresponding to and encompassed by the top level category is football and wherein one of the second level sub-categories corresponding to and encompassed by the first level sub-category is NFL.

The Examiner takes Official Notice to the fact that one of the top-level categories comprises sports, wherein one of the first level sub-categories corresponding to and encompassed by the top level category is football and wherein one of the second level sub-categories corresponding to and encompassed by the first level sub-category is NFL.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the hierarchy taught by Ellis to include a sports, football and NFL hierarchy, as taught by the Examiner's Official Notice, for the purpose of allowing a user to find or provide a set of specific sports league listing to the viewer.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/
Primary Examiner, Art Unit 2421

Jason P Salce
Primary Examiner
Art Unit 2421

December 10, 2008